

1 WRIGHT, FINLAY & ZAK, LLP
2 T. Robert Finlay, Esq., SBN 167280
3 Nicole S. Dunn, Esq., SBN 213550
4 4665 MacArthur Court, Suite 200
5 Newport Beach, CA 92660
6 Telephone: (949) 477-5050; Facsimile: (949) 608-9142

7 Attorneys for Appellees/Defendants, Ocwen Loan Servicing, LLC
8 and Mortgage Electronic Registration Systems, Inc.

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 In re: STEVEN MARK ROSENBERG,
12 Debtor.

District Court Case No.:
2:18-cv-10188-AG

(Honorable Andrew J. Guilford)

13
14 STEVEN MARK ROSENBERG,

US Bankruptcy Court Case No.:
Case No. 1:17-bk-11748-VK

15 Plaintiff,

Chapter 7

16 v.

Adversary Case No. 1:17-ap-01096-VK

17 ALLIANCE BANCORP, INC (Estate),
18 MORTGAGE ELECTRONIC
19 REGISTRATION SYSTEMS, INC.,
20 OCWEN LOAN SERVICING, ONE
21 WEST BANK, DEUTSCHE BANK
22 NATIONAL TRUST COMPANY, AS
23 TRUSTEE FOR ALLIANCE
24 BANCORP MORTGAGE BACKED
25 PASS-THROUGH CERTIFICATE
26 SERIES 2007-OA1 AND DOES 1
27 THROUGH 25, INCLUSIVE,

**APPELLEES/DEFENDANTS’
OBJECTION TO THE RESPONSE
TO THE ORDER TO SHOW CAUSE**

Hearing Date:
TBD

28 Defendants.

///

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendants, Ocwen Loan Servicing, LLC and Mortgage Electronic Registration Systems, Inc. ("Appellees") hereby submit an objection to the Response to Order to Show Cause ("Response") submitted by Plaintiff/Appellant Steven Mark Rosenberg ("Rosenberg").

Factual Background:

By way of his adversary proceeding, Rosenberg sought damages and declaratory relief by challenging the recorded assignments of Deed of Trust, alleging violations of FRBP 3001 for failure to file a proof of claim and alleging fraud by concealing a broken chain of assignments. (Adversary Case No. 1:17-ap-01096-VK - Dkt. No. 1). Defendants/Appellees' Motion for Judgment on the Pleadings ("MJOP") was granted and the court entered a judgment in favor of all Defendants/ Appellees on June 7, 2018. (Dkt. No. 56).

Rosenberg then filed his Motion to Alter or Amend the Judgment on June 11, 2018 (Dkt. No. 58) which was frivolous, without factual or legal merit, and an improper use of a Rule 59(e) motion because there was no new evidence; there is no new law; and, nothing in the motion remotely established that the court's decision was a product of "clear error" or "manifestly unjust" as discussed in the Motion for Sanctions (Dkt Nos. 61-62). On November 21, 2018, this Court denied Rosenberg's Motion to Alter or Amend the Judgment and entered an Order. (Dkt No. 74). Rosenberg filed his Notice of Appeal on December 6, 2018 stating that the subject of the appeal is the MJOP and that the judgment, order or decree was entered on 06/07/2018. (Dkt No. 78 – see, Part 2).

Argument:

The Federal Rule of Bankruptcy Procedure (FRBP) Rule 8002 sets forth the rules for the time to file a Notice of Appeal.

///

///

RECEIVED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
JAN 22 2019

1 Rule 8002(a)(1) states in part: “*Fourteen-Day Period*. Except as provided in
2 subdivisions (b) and (c), a notice of appeal must be filed with the bankruptcy clerk
3 within 14 days after entry of the judgment, order, or decree being appealed.”

4 Rule 8002(b) states in part: “Effect of a Motion on the Time to Appeal.

5
6 (1) *In General*. If a party timely files in the bankruptcy court any of the
7 following motions, the time to file an appeal runs for all parties from the entry of
8 the order disposing of the last such remaining motion:

9 . . .

(B) to alter or amend the judgment under Rule 9023¹; . . .

10 In this instance, Rosenberg was required to file his Notice of Appeal no later
11 than December 5, 2018, which was 14 days from November 21, 2018 when the
12 Court entered the Order denying the Motion to Alter or Amend the Judgment. (Dkt
13 No. 74). Plaintiff admits that he failed to do so. Instead he filed the Notice of
14 Appeal on December 6, 2018 because “all government offices were closed” as a
15 day of mourning for President George H.W. Bush. (see, Response 4:7-8).

16 However, this is no excuse for the untimely filing. President George H.W.
17 Bush died on November 30, 2018. On Saturday December 1, 2018, President
18 Trump issued a proclamation announcing a “National Day of Mourning” and that
19 the federal courthouses around the country would be closed on Wednesday,
20 December 5, 2018. See **Exhibit A** attached hereto and incorporated herein by
21 reference.

22 Thus, Rosenberg had ample notice that the federal courts would be closed on
23 December 5, and should have filed the Notice of Appeal prior to that time or filed a
24 motion to extend the time to file a Notice of Appeal per FRBP Rule 8002(d) which
25 states:

26
27 ¹ Rule 9023 provides: Except as provided in this rule and Rule 3008, Rule 59 F.R.Civ.P. applies in cases under the
28 Code. A motion for a new trial or to alter or amend a judgment shall be filed, and a court may on its own order a
new trial, no later than 14 days after entry of judgment. In some circumstances, Rule 8008 governs post-judgment
motion practice after an appeal has been docketed and is pending.

(1) *When the Time May be Extended*. Except as provided in subdivision (d)(2), the bankruptcy court may extend the time to file a notice of appeal upon a party's motion that is filed:

(A) within the time prescribed by this rule; or

(B) within 21 days after that time, if the party shows excusable neglect.

Rosenberg did not timely file a motion to extend within the 14 days. H did not file a motion to extend showing excusable neglect 21 days after the 14 days had run. He merely filed the Notice of Appeal on December 6, nothing more. (Dkt No. 78). As such, Rosenberg's appeal should be dismissed because the Notice of Appeal was inexcusable late.

Respectfully submitted,
WRIGHT, FINLAY & ZAK, LLP

Dated: January 17, 2019

By: /s/ Nicole S. Dunn
T. Robert Finlay, Esq.
Nicole S. Dunn, Esq.
Attorneys for Defendants, Ocwen Loan
Servicing, LLC and Mortgage Electronic
Registration Systems, Inc.

WRIGHT, FINLAY & ZAK, LLP
ATTORNEYS AT LAW

EXHIBIT A



PROCLAMATIONS

Presidential Proclamation Announcing the Death of George H.W. Bush

Issued on: December 1, 2018



It is my sorrowful duty to announce officially the death of George Herbert Walker Bush, the forty-first President of the United States, on November 30, 2018.

President Bush led a great American life, one that combined and personified two of our Nation's greatest virtues: an entrepreneurial spirit and a commitment to public service. Our country will greatly miss his inspiring example.

On the day he turned 18, 6 months after the attack on Pearl Harbor, George H.W. Bush volunteered for combat duty in the Second World War. The youngest aviator in United States naval history at the time, he flew 58 combat missions, including one in which, after taking enemy fire, he parachuted from his burning plane into the Pacific Ocean. After the war, he returned home and started a business. In his words, "the big thing" he learned from this endeavor was "the satisfaction of creating jobs."

The same unselfish spirit that motivated his business pursuits later inspired him to resume the public service he began as a young man. First, as a member of Congress, then as Ambassador to the United Nations, Chief of the United States Liaison Office in China, Director of Central Intelligence, Vice President, and finally President of the United States, George H.W. Bush guided our Nation through the Cold War, to its peaceful and victorious

end, and into the decades of prosperity that have followed. Through sound judgment, practical wisdom, and steady leadership, President Bush made safer the second half of a tumultuous and dangerous century.

Even with all he accomplished in service to our Nation, President Bush remained humble. He never believed that government — even when under his own leadership — could be the source of our Nation’s strength or its greatness. America, he rightly told us, is illuminated by “a thousand points of light,” “ethnic, religious, social, business, labor union, neighborhood, regional and other organizations, all of them varied, voluntary and unique” in which Americans serve Americans to build and maintain the greatest Nation on the face of the Earth. President Bush recognized that these communities of people are the true source of America’s strength and vitality.

It is with great sadness that we mark the passing of one of America’s greatest points of light, the death of President George H.W. Bush.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States, in honor and tribute to the memory of President George H.W. Bush, and as an expression of public sorrow, do hereby direct that the flag of the United States be displayed at half-staff at the White House and on all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions for a period of 30 days from the day of his death. I also direct that, for the same length of time, the representatives of the United States in foreign countries shall make similar arrangements for the display of the flag at half staff over their embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

I hereby order that suitable honors be rendered by units of the Armed Forces under orders of the Secretary of Defense.

I do further appoint December 5, 2018, as a National Day of Mourning throughout the United States. I call on the American people to assemble on that day in their respective places of worship, there to pay homage to the memory of President George H.W. Bush. I invite the people of the world who share our grief to join us in this solemn observance.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of December, in the year of our Lord two thousand eighteen, and of the Independence of the United States of America the two hundred and forty-third.

DONALD J. TRUMP

PROOF OF SERVICE

I, Gretchen Grant, declare as follows:

I am employed in the County of Orange, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 4665 MacArthur Court, Suite 200, Newport Beach, California 92660. I am readily familiar with the practices of Wright, Finlay & Zak, LLP, for collection and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited with the United States Postal Service the same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

On January 17, 2019, I served the within **APPELLEES/DEFENDANTS' OBJECTION TO THE RESPONSE TO THE ORDER TO SHOW CAUSE** on all interested parties in this action as follows:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Steven Mark Rosenberg
106 1-2 Judge John Aiso Street, PMB#225
Los Angeles, CA 990012
310-971-5037
Email: Founder@PuttingElders1st.org
Plaintiff Pro Se

☒ (BY MAIL SERVICE) I placed such envelope(s) for collection to be mailed on this date following ordinary business practices.

☐ (BY PERSONAL SERVICE) I caused personal delivery by ATTORNEY SERVICE of said document(s) to the offices of the addressee(s) as set forth on the attached service list.

☐ (BY FACSIMILE) The facsimile machine I used, with telephone no. (949) 477-9200, complied with California Rules of Court, Rule 2003, and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2006(d), I caused the machine to print a transmission record of the transmission, a copy of which is attached to the original Proof of Service.

☐ (BY FEDERAL EXPRESS OVERNIGHT- NEXT DAY DELIVERY) I placed true and correct copies thereof enclosed in a package designated by Federal Express with the delivery fees provided for. 1

PROOF OF SERVICE

1 [x] (CM/ECF Electronic Filing) I caused the above document(s) to be transmitted to the
2 office(s) of the addressee(s) listed by electronic mail at the e-mail address(es) set
3 forth above pursuant to Fed.R.Civ.P.5(b)(2)(E). "A Notice of Electronic Filing
4 (NEF) is generated automatically by the ECF system upon completion of an
5 electronic filing. The NEF, when e-mailed to the e-mail address of record in the
6 case, shall constitute the proof of service as required by Fed.R.Civ.P.5(b)(2)(E). A
copy of the NEF shall be attached to any document served in the traditional manner
upon any party appearing pro se."

7 [x] (Federal) I declare under penalty of perjury under the laws of the United States of
8 America that the foregoing is true and correct.

9 Executed on January 17, 2019, at Newport Beach, California.

10 
11 _____
12 Gretchen Grant